

MT LEGISLATIVE HISTORY

Chapter 316 1971

Bill H _____ S 203 Original bill & hist. C

H. Committee on Public Health, Welfare & Safety S. Committee on Public Health, Welfare & Safety

Hearing Date(s) Feb 16 ☒ C

Hearing Date(s) Feb 02 ☒ C

Feb 22 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 22 ☒ C

Feb 02 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

February 2, 1971
10:00 AM

The meeting was called to order and proceeded after roll call, there being a quorum present.

SB #202. Sen. Sheehy, as sponsor of the bill, explained that this bill would allow minors needing psychiatric help to give legal consent. He then introduced Dr. Donald L. Harr of Billings, representing the Montana Medical Association. He stated the purpose of this legislation was to give minors help in emergencies, such as cases of suicide, etc., where parents will not give consent. He said he had talked with most practicing psychiatrists and many psychologists and they all approve, and that he had not run into anyone who disapproves of it. He also mentioned that the most common age range would be 14 to 21 - usually not younger than 14.

There were no opponents to the bill.

SB #203. This bill was sponsored by Sen. Sheehy and others, and it asks to have defined the procedures for protecting the health of workers of the state. He introduced Dr. Anderson, Director of the State Board of Health, who stated they listed this as a number one priority for the State Board of Health. There is not a better group who could administer this act than the present one, including the housewives. He then introduced Mr. Ben Wake of the Montana State Board of Health. Mr. Wake stated there has been a considerable deficiency in the occupational health program. There are thousands of new chemicals every year which can damage the health of workers. We need something better than the old law. We have better laws today to protect trees, fish, etc. than to protect the man at his working place, including the self-employed. I can prove all the things I say. I believe the bill is very worthy and hope you will support it. It is directed to every place who employs people - again including the self-employed.

Sen. Sheehy then introduced the following persons, each of whom spoke briefly in support of SB #203:

Mr. James Murry, Montana State AFL-CIO
Mr. J. P. Mooney, Montana State AFL-CIO and United Steel Workers
Mr. Jack Harris, U.S. Steel Workers of America, Local #72,
East Helena
Mr. Chuck Forman, Aluminum Workers Trades Council,
Columbia Falls
Mr. Mike Sestrick, USWA, Anaconda 6002
Mr. Delano D. Lords, United Steel Workers of America, Great Falls
Mr. Owen McWalley, United Steel Workers of America
Mr. Joe Rossum, Montana Joint Council of Teamsters.

Mr. R. L. Brown, representing the Anaconda Co., appeared -- not in opposition to the bill, but gave some amendments he would like.

February 2, 1971
Page #2

HB #85. Representative A. L. Ainsworth of District #26, Missoula, appeared before the committee as chief sponsor. He explained this would transfer administrative authority to the State Board of Health and would increase the advisory council to 12 members. HB #85 was drafted with the cooperation of the Water Resources Board, Fish and Game, and Board of Health. Amendments were made to the original bill and it passed the House unanimously. He stated he had no knowledge of any opposition and asked urgently for the support of this legislation.

Sen. Bollinger stated he had introduced a similar bill as Senate Bill #27, but he thought the House bill the better one and was willing to let SB #27 die. A few minor amendments were discussed but one of the authors explained the wording in the House bill satisfactorily.

All witnesses were excused and the committee discussed the bills before it today.

HB #85. Moved by Bollinger, seconded by Deschamps that HB #85 BE CONCURRED IN. Motion carried.

SB #202. Motion by Hibbard, seconded by Bollinger that SB #202 DO PASS. Motion carried.

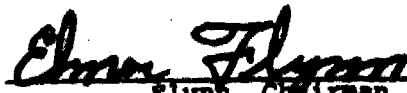
SB #203. Motion by Bollinger, seconded by Hibbard that SB #203 DO PASS AS AMENDED. Motion carried. (Amendments to be submitted by Sen. Sheehy.)

The sub-committee (Mitchell, Bollinger & Deschamps) which had been appointed to further study SB #126 and SB #172, submitted their report. After considerable discussion of the expense which would be involved, the following action was taken.

SB #126. Motion by Deschamps, seconded by Cotton that SB #126 DO PASS AS AMENDED. Motion carried.

SB #172. Motion by Deschamps, seconded by Bollinger that SB #172 DO NOT PASS. Motion carried.

There being no further business, the meeting adjourned.


Flynn, Chairman

COMMITTEE ON ~~PUBLIC HEALTH, WELFARE & SAFETY~~ ~~BILL NO. 27 & HB 85~~ SB 202, 203,

VISITOR'S REGISTER

Feb. 2, 1971

NAME	REPRESENTING	Check One	
		Support	Oppos
Donald H. Herr, M.D. 202	Montana Medical Association	✓ 202	
J. P. McCarty	United Truckers of Am.	✓ 203	
Delano D. Jordan	United Truckers of America	✓ 203	
James J. Kelly	United Truckers Local 1012	✓	
John P. Paul & Louis	United Truckers Local 112	203	
Walter L. Leland	U.S.W.A. Local 6002	203	
W. J. Brown	Montana Dist. Council of Truckers	203	
Ben Wake	Mont. State Dept. of Health	203	
James Gannon	Legislative Intergroup		
W. E. G. Smith	Aluminum Workers T.C. Cl. Fed	203	
W. E. G. Smith	Aluminum Workers Trade Council Cl. Fed	203	
James W. Murphy	Mont. State AFL-CIO	✓ 203	
R. L. Brown	The Anderson Co	Annul	
Robert H. Holding	Montana Wood Products Assn	Annul	

Page 2 (February 16, 1971)

Jack Harris, representing the workers in East Helena's Anaconda Company and refining factory said that the town has excessive concentrations of sulphur dioxide gas. The working conditions are faced with great excesses of this naturally.

Owen McNally, Anaconda Company, said that during the past 20 years there has been no effort on the part of management to improve the working conditions at all. They have just conglomerated the plant instead of changing the situation. His union has tried everything to make management realize their poor conditions, but nothing has worked. They even took a survey and had many promises made to them about future improvements. His union is under a "no strike" pledge which they intend to honor, so the men just rot.

Since there no opponents, discussion was held. There is no fiscal note with this bill because it is included in the present budget. One person now employed by the Board of Health could handle the job, although 4 more people would be ideal. The federal law could pre-empt the state program and run it. Possibly the federal program could do a better job than the state program.

Witnesses were excused.

SENATE BILL #201 -- SPONSOR: Senator Siderius said this was a good bill, and urged its passage.

PROPOSERS:

Socs Vratiss, lobbyist for the blind, said that on the present welfare roles there are 188 blind persons. Section 4 is the heart of the bill. This part calls for a blind person to be able to take his seeing eye dog into a building. The blind person would assume any liability for damage that the dog might do while inside the building. It also provides that only the blind or partially blind can carry white canes.

There being no opponents or discussion, the witnesses were excused.

SENATE BILL #64 -- SPONSOR: Since Senator Bennett was not present, Dr. Anderson gave some background on the bill.

PROPOSERS:

Dr. John Anderson, State Board of Health, said this bill could be better explained by Roland D. Pratt, State Board of Health, since this was his job.

Roland D. Pratt said that the venereal disease program started during World War II. Montana's program began in the late 1950's. Venereal disease cases are reported to the State Department of Health by a physician and the case is investigated. After the person has mentioned his contacts, the person is urged to go to a doctor for treatment. Every program and case is treated with the strictest confidentiality.

February 16, 1971

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE PROCEEDINGS:

A meeting of the Public Health, Welfare and Safety Committee was held Tuesday, February 16, 1971, at 8:00 a.m. in Room 428A with Chairman Keller presiding. All members were present but Fitzgerald, Marbut, Olson, and Norman who were absent.

SENATE BILL #203 -- SPONSOR: Senator Sheehy said this bill had been amended in the Senate since the procedures for enforcing were not clear, and therefore he thought this was a very acceptable bill and hoped it would pass. He introduced proponents to further explain the bill.

PROponents:

Dr. John Anderson, Executive Director for State Board of Health, said this bill was the first legislative priority of the Board of Health. This bill will go along way in helping the department to do a better job. The old bill has served its useful purpose. He introduced the man who wrote the bill.

Ben Wake, Air Pollution Director, said it is hard to work under the present law as it is not effective. There are 10,000 workers in the state who have injuries resulting from work conditions. There are 30,000 persons who periodically come down with illnesses which is related to their jobs. In the larger firms, the accident program is dealt with more effectively. People who are exposed to hazardous health elements in their jobs can be seriously injured, and this can't be justified. The old legislation doesn't provide the necessary impetus needed, but the new bill does. The standards that will be set will be recognized worldwide. He said the bill is not directed at the Anaconda Company or at the bigger companies. The federal government just passed the 1970 Occupational Health Act.

J. P. Mooney, staff representative for Steel Workers of America, said the unions are in full support of this bill. The AFL-CIO is also in support of this. He represented people who were primarily employed in smelters and had terrible working conditions due to noise, metals, vapors, and dust.

Dale Lohr, Great Falls, said in his plant the general unloading area is terrible because of the concentration of dust. Two out of 4 persons had very high cadmium concerns. In the zinc tank area the mist was terrible.

A representative from the carpenter's local in Great Falls said sometimes his mask has gotten so full of sulphur gas that that doesn't even help. Working conditions are terrible.

NAME Queen P. McVelly BILL No. 203.

ADDRESS 912 E. 6th St. Anacapa, Santa DATE 3-16-71

WHOM DO YOU REPRESENT? United Students of America Local #6002

SUPPORT? ☒ OPPOSE? ☐ AMEND? ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME John Anderson BILL No. 503 102
ADDRESS 2216 6th DATE 2-16
Wichita
WHOM DO YOU REPRESENT? State Rep of Kansas
SUPPORT? X OPPOSE? _____ AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME Ben Wake BILL No. SB 203

ADDRESS Helena DATE Feb 16, 1971

WHOM DO YOU REPRESENT? State Dept. of Health

SUPPORT? ☒ OPPOSE? ☐ AMEND? ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME

J.P. Mooney

BILL NO. *223*

ADDRESS

Great Falls Mont

DATE *2-16-22*

WHOM DO YOU REPRESENT?

United Brotherhood of Carpenters

SUPPORT?

☒

OPPOSE?

AMEND?

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

1. *Dale L. Linder - Great Falls*
2. *- Great Falls
(Carpenters' Local)*
3. *Jack Harris - East Helena*

C. February 22, 1971

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE PROCEEDINGS:

A meeting of the Public Health, Welfare and Safety Committee was held Monday, February 22, 1971, at 8:30 a.m., in Room 428A with Chairman Keller presiding. All members were present.

Fagg moved that SENATE BILL #290 BE CONCURRED IN. Motion seconded and carried. Lien will carry this bill on the floor.

Fagg moved that SENATE BILL #306 BE NOT CONCURRED IN. Motion seconded and carried.

Lien moved that SENATE BILL #175 BE CONCURRED IN. Motion seconded and carried. Lien will carry this bill on the floor.

Lee moved that SENATE BILL #231 BE CONCURRED IN. Motion seconded and carried. Lee will carry this bill on the floor.

Fagg moved that SENATE JOINT RESOLUTION #24 BE CONCURRED IN. Motion seconded and carried. Norman will carry this resolution on the floor.

Fagg moved that SENATE JOINT RESOLUTION #27 BE CONCURRED IN. Motion seconded and carried. Edland will carry this resolution on the floor.

Lien moved that SENATE BILL #156 BE CONCURRED IN. Motion seconded and carried. Brown will carry this bill on the floor.

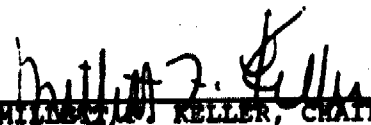
Lee moved that SENATE BILL #159 BE CONCURRED IN. Motion seconded, greatly discussed, and carried. Lee will carry this bill on the floor.

Asbjornson moved that SENATE BILL #18 BE NOT CONCURRED IN. Motion seconded and carried. The committee referred HB #605 to Appropriations Committee. Motion made, seconded, and carried to that effect.

Lien moved that SENATE BILL #282 BE CONCURRED IN. Motion seconded and carried. Edland will carry this bill on the floor.

Lien moved that SENATE BILL #203 BE CONCURRED IN. Motion seconded and carried. Keller will carry this bill on the floor.

There being no further business, the meeting was adjourned.


WILLIAM F. KELLER, CHAIRMAN


JUDY PRATT, SECRETARY

Legal capacity.

cannot be obtained within a reasonable time to offset the said danger to life or safety, when executed by the said minor shall be valid and binding as if the said minor had achieved his or her majority, that is, such minor shall be deemed to have and shall have the same legal capacity to act, and the same legal obligations with regard to the giving of such consent, as a person of full legal age and capacity, the infancy of said minor and any contrary provisions of law notwithstanding, and such consent shall not be subject to later disaffirmance by reason of such minority; and the consent of no other person or persons (including, but not limited to a spouse, parent, custodian or guardian) shall be necessary in order to authorize the psychiatric or psychological counseling to such minor, provided, however, that no parent shall be obligated for the cost of such counseling without his consent.

Limitation of liability.

Section 2. In any case arising under the provisions of this act the physician or licensed psychologist who provides the psychiatric or psychological counseling services shall incur no civil or criminal liability by reason of having provided the counseling services, but such immunity shall not apply to any negligent acts or omissions.

Approved March 15, 1971

CHAPTER NO. 316

An Act Providing for the Conservation of the Health of Workers of the State; Providing for Prevention, Abatement, and Control of Occupational Diseases; Providing Penalties for Violation; and Repealing Sections 69-4201, 69-4202, 69-4203, and 69-4205, R.C.M., 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

"Occupational Health Act of Montana.

Section 1. **Short Title.** This act shall be known and may be cited as the "Occupational Health Act of Montana".

Public policy—protection of human health and safety.

Section 2. **Declaration of policy and purpose.** (1) It is hereby declared to be the public policy of this state and the purpose of this act to achieve and maintain such conditions at the work place as will protect human health and safety, and to the greatest degree practicable, foster the comfort and convenience of the workers at any work

place of this state and enhance their productivity and well-being.

(2) To these ends it is the purpose of this act to provide for a coordinated statewide program of abatement and control of occupational diseases, for an appropriate distribution of responsibilities among the state and local units of government, and to provide a framework within which all values may be balanced in the public interest.

Purpose—abatement and control of occupational diseases.

Section 3. **Definitions.** As used in this act:

Definitions.

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

"Air contaminant."

(2) "Emission" means a release into the workspace atmosphere of air contaminants or pollutants.

"Emission."

(3) "Occupational disease" means an illness, impairment or disability that:

"Occupational disease."

(a) Arises from the person's employment.

(b) Is caused by exposure to a substance or industrial practice which is hazardous to health.

(c) Has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases.

(d) Is not the result of a person's contact or activities outside his employment.

(4) "Worker" is a person gainfully employed at any place.

"Worker."

(5) "Work place" is any place or location where a person is gainfully employed.

"Work place."

(6) "Occupational health" is a field of specialization concerned with those problems of health maintenance, productivity and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

"Occupational health."

(7) "Threshold limit values" shall mean airborne concentrations of substances to which it is believed that nearly all workers may be repeatedly exposed day after day without adverse effect.

"Threshold limit values."

"Pollutant." (8) "Pollutant" shall mean air contaminants, heat, noise, vibration and ionizing radiation and nonionizing radiation.

"Sanitary facilities." (9) "Sanitary facilities" shall mean toilets, showers, dressing rooms, lunch rooms, sewage disposal systems and potable water systems.

"Department." (10) "Department" shall mean the Montana state department of health.

"Board." (11) "Board" shall mean the Montana state board of health.

"Person." (12) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.

"Advisory committee." (13) "Advisory committee" means the occupational health advisory committee created by this act.

"Director." (14) "Director" means the director of the occupational health program, a position created by this act.

"Executive officer." (15) "Executive officer" means the chief administrative officer of the state department of health.

Section 4. **Administration — state department of health.** Except as otherwise provided, the department, acting under the guidance of the board as to matters of policy, is responsible for administration of the provisions of this act. The executive officer shall appoint a director of the occupational health program to perform the duties and powers conferred upon the department by this act. The director shall meet requirements established by the board. The executive officer may delegate to any employee of the department such duties and functions as he deems necessary for the proper and efficient administration of this act, and the executive officer shall have the authority with the approval of the board and within the limitation of funds, to hire additional employees and to discharge same for cause.

Section 5. (1) There is hereby created an occupational health advisory committee hereinafter called the advisory committee. The advisory committee shall consist of seven (7) members as follows:

(a) A representative of labor.

(b) A representative of agriculture.

(c) A representative of the manufacturing industry.

(d) A practicing physician licensed in Montana.

(e) A practicing dentist licensed to practice in Montana.

(f) A practicing registered professional engineer.

(g) A lay person.

The chairman shall be elected by the advisory committee from among this number.

Chairman.

(2) Members are appointed by the governor with the advice and consent of the senate. The terms of members shall be four (4) years except that the two (2) initially appointed members shall serve for one (1) year; two (2) shall serve for two (2) years; two (2) shall serve for three (3) years and one (1) shall serve for four (4) years as designated by the governor at the time of making the appointment.

Appointment by governor.
Terms of office.

(3) The seven (7) members appointed by the governor to serve on the advisory committee shall each be paid, in addition to actual travel expense, twenty-five dollars (\$25) per day for each day of actual services in the performance of their duties; and all members of the advisory committee shall be reimbursed for travel and other necessary expenses incurred in their official duties as members of the advisory council. The expense and per diem of the members who are appointed by the governor shall be paid from funds made available to the department.

Per diem \$25—
expenses.

(4) The advisory committee shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him upon receipt of a written request signed by two (2) or more members of the advisory committee. Notice of the time and place for all meetings shall be given in advance to each member of the advisory committee by the secretary. A majority of the members of the advisory committee shall constitute a quorum.

At least two
meetings each year.

Records.
Special meetings.

Notice.

Quorum.

(5) The secretary of the advisory committee shall be a member of the staff of the state department of health,

Secretary.

Duties.	designated by the executive officer. The secretary shall keep all records of meetings of, and actions taken by, the committee. He shall keep the advisory committee advised as to actions taken by persons in response to recommendations and orders issued under authority of this act and shall perform other duties as determined by the advisory committee, not inconsistent with rules, regulations and policies adopted by authority of this act or specific authority otherwise given the advisory committee.
Advisory duties.	(6) The advisory committee may consider standards, rules, and regulations as provided in this act and any other matter related to the purposes of the act, which may be submitted to it by the board. It may make recommendations to the board on its own initiative concerning the administration of this act.
Powers of board.	Section 6. Powers of board. In addition to any other powers conferred on it by law, the board shall:
Rules.	(1) Adopt, amend, and repeal rules implementing and consistent with the provisions of this act.
Hearings.	(2) Hold hearings relating to any aspect of or matter in the administration of this act, at any place or places designated by the board. The board may designate the director as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct the hearing. The board or the director as hearing officer may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.
Hearing officer.	
Subpoena.	
Attorney.	
Reporter.	
Orders.	(3) Issue such orders as may be necessary to effectuate the purposes of this act and enforce them by all appropriate administrative and judicial proceedings.
Access to records.	(4) Require access to records relating to emissions.
Expert assistance.	(5) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise.
Comprehensive plans.	(6) Prepare and develop a comprehensive plan or

plans for the prevention, abatement, and control of occupational disease.

(7) Encourage voluntary cooperation by persons and affected groups to achieve the purpose of this act. Cooperation.

(8) Encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, preventions, abatement, and control. Studies and research.

(9) Determine by means of field studies and sampling the degree of health hazard at any work place in the state. Degree of health hazard.

(10) Establish threshold limit values of airborne contaminants for the state as a whole within ninety (90) days of passage of this act. Threshold limit values.

(11) Collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases. Information and training.

(12) Advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups. Cooperation with other agencies.

(13) Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States for the purpose of carrying out any of the functions of this act. Funds received by the board pursuant to this section shall be deposited in the state treasury to the account of the board. Gifts and grants.

Section 7. **Permits.** (1) The board may, by rule or regulation, prohibit the installation, alteration, or use of any machine, equipment, device or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit therefor has been obtained from it. Board may require permit.

(2) The board may require that applications for such permits shall be accompanied by plans, specifications, and such other information at it deems necessary. Applications.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of any permits which it may require pursuant to this section. Permits.

Decision within
90 days.

(4) If a permit is required, the board must decide within ninety (90) days after receiving application therefor, whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been denied.

Authority to
inspect.

Section 8. **Inspection.** (1) Any duly authorized officer, employee, or representative of the board may enter and inspect, at any reasonable time, any property, premises or place, except a private residence, where any person or persons are, or will be, employed to ascertain the state of compliance with this act and rules in force pursuant thereto.

Refusal of access
prohibited.

(2) No person shall refuse entry or access to any authorized representative of the board who requests entry for purposes of inspection, and who presents appropriate credentials. No person shall obstruct, hamper, or interfere with any such inspection.

Report on request.

(3) At his request, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

Limitations on
emissions.

Section 9. **Emissions prohibited.** (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate or control occupational diseases. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlled and no emissions in excess thereof shall be lawful. The board may also establish standards for sanitary facilities and lunchrooms.

Standards.

Measuring
emissions.

(2) The board may by rule use any widely recognized measuring system for measuring emissions of pollutants.

Federal standards.

(3) Should federal minimum standards of industrial hygiene or occupational health be set by federal law, the board may, if necessary, set more stringent standards by rule or regulation.

Written notice
to violators.

Order to correct.

Section 10. **Enforcement.** (1) Whenever the director has reason to believe that a violation of any provision of this act or rule made pursuant thereto has occurred, he may cause written notice to be served upon the alleged violator or violators, and the facts alleged to constitute a violation thereof, and may include an order to take necessary corrective action within a reasonable period of

time stated in the order. Any such order shall become final unless, no later than thirty (30) days after the date of notice is received, the person or persons named therein request in writing a hearing before the board. Upon receipt of such a request, the board shall hold a hearing.

Hearings.

(2) If, after a hearing held pursuant to subsection (1) of this section, the board finds that a violation or violations have occurred, it shall either affirm or modify any order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the emissions involved or for the taking of such other corrective action as it may deem appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

Board may issue
orders.

(3) In lieu of issuing the order provided for in subsection (1) of this section, the board may either:

Board alternatives.

(a) Require that the alleged violator or violators appear before it for a hearing at a time and place specified in a notice, and answer the charges complained of; or

Hearing.

(b) Initiate action pursuant to section 16 of this act.

(4) Nothing in this act shall prevent the board from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

Voluntary
compliance.

(5) In connection with any hearing held pursuant to this section, the board may, and upon application by any party shall, compel the attendance of witnesses and the production of evidence on behalf of all parties.

Subpoena.

Section 11. **Emergency procedure.** (1) Any other provisions of law to the contrary notwithstanding, if the director finds that a generalized hazard at any work place exists and that it creates an emergency requiring immediate action to protect human health, the director shall order persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of any such order, the director shall fix a place and time, not later than seventy-

Emergencies.

Findings of director.

Order.

Hearing. two (72) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order of the director.

Board action.

Findings of director. Order. (2) In the absence of any such generalized condition as that referred to in subsection (1) of this section, if the director finds that emissions from any operation is causing imminent danger to human health, he may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard for the provisions of section 10 of this act. In such event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in section 10 shall apply.

Board action.

Other emergency powers not limited. (3) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, whether such power is conferred by statute or constitutional provisions or inheres in the office.

Application for variance. Section 12. **Variances.** (1) Any person who owns or is in control of any plant, building, structure process or equipment may apply to the board for an exemption or partial exemption from rules or regulations governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant such exemption or partial exemption if it finds that:

Findings of board—exemptions.

(a) The emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker.

(b) Compliance with the rules and regulations from which exemption is sought would produce hardship without equal or greater benefits to the worker.

Public hearing—notice. (2) No exemption or partial exemption shall be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, and the worker or workers involved.

(3) No exemption or partial exemption pursuant to this section shall be granted for a period to exceed one (1) year, but any such exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, such complaint having been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal the applicant shall give public notice of such application in accordance with rules and regulations of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (a) of this section.

(4) An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be in the discretion of the board. However, any person adversely affected by an exemption, partial exemption or renewal granted by the board may obtain judicial review thereof as provided by section 13 of this act.

(5) Nothing in this section and no exemption, partial exemption or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 11 of this act to any person or his property.

Section 13. **Hearings and judicial review.** (1) No rule or amendment or repeal thereof shall take effect except after public hearing on due notice, and after the advisory committee has been afforded not less than thirty (30) days prior to publication of the proposed text to comment thereon. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for such hearing.

(2) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to section 11 of this act.

(3) Any person aggrieved by any order of the board

One year exemption.

Renewal.

Hearing—notice.

Application.

Public notice.

Judicial review.

Emergency procedures not limited.

Public hearing—notice.

Consideration by advisory committee.

Publication of notice.

Emergency order not limited.

Rehearing—grounds.

may apply for rehearing upon one (1) or more of the following grounds, and upon no other grounds:

- (a) The board acted without or in excess of its powers.
- (b) The order was procured by fraud.
- (c) The order is contrary to the evidence.

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

Petition—form.

Appeal to district court.

(4) (a) Within thirty (30) days after the application for rehearing is denied, or, if the application is granted, within thirty (30) days after the decision on the rehearing, any party aggrieved thereby may appeal to the district court of any judicial district of the state which is the situs of property affected by the order.

Notice of appeal—service.

Board shall certify record to district court.

Court shall fix date.

(b) The appeal shall be taken by serving a written notice of appeal upon the executive officer of the board, which service shall be made by the delivery of a copy of the notice to such officer, and by filing the original with the clerk of the court to which the appeal is taken. Immediately upon service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause, and shall cause a notice of the same to be served upon the board and the appellant.

Determination by court.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence and whether or not the board made error of law prejudicial to the appellant.

Appeal to supreme court.

(5) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before

the board and of the district court's review of that record.

Section 14. Confidentiality of records. (1) Any records or other information concerning pollutants or operations which are furnished to or obtained by the board, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, shall be only for the confidential use of the board in the administration of this act, unless the owner shall expressly agree to their publication or availability to the general public.

Records and information shall be confidential.

Waiver.

(2) Nothing contained in this section shall be construed to prevent the use of such records or information by the board in compiling or publishing analyses or summaries relating to the general condition at the work place, provided that such analyses or summaries do not identify any owner or operator or reveal any information made otherwise confidential by the provisions of this section.

Analyses and summaries not limited.

Section 15. State and federal aid. The department may make application for, receive, administer, and expend any federal aid for the control of occupational diseases or the development and administration of industrial hygiene programs related to occupational disease control, provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this act and any other applicable requirements of law.

Federal aid.

Section 16. Penalties. (1) Any person who violates the provisions of this act relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from any source determined as provided herein to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this act) shall be guilty of an offense and subject on account thereof to a fine not to exceed one thousand dollars (\$1,000). Each day of violation shall constitute a separate offense.

Penalties for violations.

(2) Proceedings under this section shall not be a bar to enforcement of this act, or of rules or orders made pursuant thereto, by injunction or other appropriate remedy. The board may institute and maintain in the

Other remedies.

name of the state any and all such enforcement proceedings.

Civil actions
not limited.

(3) Nothing in this act shall be construed to abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damage or other relief on account of injury to persons or property and to maintain any section of other appropriate proceeding therefor.

Deposit of fines.

(4) All fines collected shall be deposited to the state general fund.

Severability clause.

Section 17. **Severability.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Repealing clause.

Section 18. Sections 69-4201, 69-4202, 69-4203 and 69-4205, R.C.M., 1947, are hereby repealed.

Approved March 15, 1971

CHAPTER NO. 317

An Act to Amend Sections 84-301 and 84-302, R.C.M., 1947, Providing a Classification for One Hundred Percent Disabled Veterans.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 84-301, R.C.M., 1947, is amended to read as follows:

Classification of
taxable property.

"84-301. **Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Mines and claims.

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of

Determination
of value.

equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 1/4) miles.

Personal property.

Rural telephone
equipment.

Class Three. Livestock, poultry and the unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Livestock, poultry,
merchandise,
business furniture
and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five or Class Seven.

Land, town and
city lots, trailers.

Manufacturing and
mining machinery,
fixtures and
supplies.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade.

Mobile homes.